

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NORTH BEND ASSOCIATES, LLC, a
Washington Corporation

11

CITY OF NORTH BEND,

Plaintiff.

and

RIVER RUN VENTURES, LLC, a Delaware limited liability company,

Interested Party.

NO. 2:22-cv-00509

STIPULATED PROTECTIVE ORDER

**NOTED FOR CONSIDERATION:
FEBRUARY 17, 2023**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited

**STIPULATED PROTECTIVE ORDER
CASE NUMBER 22-2-CV-00509 - 1**

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1 information or items that are entitled to confidential treatment under the applicable legal principles, and it
2 does not presumptively entitle parties to file confidential information under seal.

3 2. **"CONFIDENTIAL" MATERIAL**

4 "Confidential" material shall include the following documents and tangible things produced or
5 otherwise exchanged: financial information including applications for financing relating to the property
6 at issue in this case, and documentation relating to the sale of the property subject to contractual
7 confidentiality provisions.

8 3. **SCOPE**

9 The protections conferred by this agreement cover not only confidential material (as defined
10 above), but also (1) any information copied or extracted from confidential material; (2) all copies,
11 excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or
12 presentations by parties or their counsel that might reveal confidential material.
13

14 However, the protections conferred by this agreement do not cover information that is in the
15 public domain or becomes part of the public domain through trial or otherwise.
16

17 4. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

18 4.1 **Basic Principles.** A receiving party may use confidential material that is disclosed or
19 produced by another party or by a non-party in connection with this case only for prosecuting, defending,
20 or attempting to settle this litigation. Confidential material may be disclosed only to the categories of
21 persons and under the conditions described in this agreement. Confidential material must be stored and
22 maintained by a receiving party at a location and in a secure manner that ensures that access is limited
23 to the persons authorized under this agreement.
24

4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

- (a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;
 - (b) the officers, directors, and employees (including in house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular document or material produced is for Attorney's Eyes Only and is so designated;
 - (c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
 - (d) the court, court personnel, and court reporters and their staff;
 - (e) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;
 - (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;
 - (g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

STIPULATED PROTECTIVE ORDER
CASE NUMBER 22-2-CV-00509 - 3

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1 4.3 Filing Confidential Material. Before filing confidential material or discussing or
2 referencing such material in court filings, the filing party shall confer with the designating party, in
3 accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove
4 the confidential designation, whether the document can be redacted, or whether a motion to seal or
5 stipulation and proposed order is warranted. During the meet and confer process, the designating party
6 must identify the basis for sealing the specific confidential information at issue, and the filing party
7 shall include this basis in its motion to seal, along with any objection to sealing the information at issue.
8 Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be
9 applied when a party seeks permission from the court to file material under seal. A party who seeks to
10 maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule
11 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will
12 result in the motion to seal being denied, in accordance with the strong presumption of public access to
13 the Court's files.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-
16 party that designates information or items for protection under this agreement must take care to limit
17 any such designation to specific material that qualifies under the appropriate standards. The designating
18 party must designate for protection only those parts of material, documents, items, or oral or written
19 communications that qualify, so that other portions of the material, documents, items, or
20 communications for which protection is not warranted are not swept unjustifiably within the ambit of
21 this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to
 2 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber
 3 or delay the case development process or to impose unnecessary expenses and burdens on other parties)
 4 expose the designating party to sanctions.

5 If it comes to a designating party's attention that information or items that it designated for
 6 protection do not qualify for protection, the designating party must promptly notify all other parties that
 7 it is withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
 10 (see, e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated or ordered, disclosure
 11 or discovery material that qualifies for protection under this agreement must be clearly so designated
 12 before or when the material is disclosed or produced.

14 (a) Information in documentary form: (e.g., paper or electronic documents and
 15 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the
 16 designating party must affix the word "CONFIDENTIAL" to each page that contains confidential
 17 material. If only a portion or portions of the material on a page qualifies for protection, the producing
 18 party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 19 margins).

20 (b) Testimony given in deposition or in other pretrial proceedings: the parties and
 21 any participating non-parties must identify on the record, during the deposition or other pretrial
 22 proceeding, all protected testimony, without prejudice to their right to so designate other testimony after
 23 reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript
 24 of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,

1 as confidential. If a party or non-party desires to protect confidential information at trial, the issue
 2 should be addressed during the pre-trial conference.

3 (c) Other tangible items: the producing party must affix in a prominent place on the exterior
 4 of the container or containers in which the information or item is stored the word “CONFIDENTIAL.”
 5 If only a portion or portions of the information or item warrant protection, the producing party, to the
 6 extent practicable, shall identify the protected portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
 8 qualified information or items does not, standing alone, waive the designating party’s right to secure
 9 protection under this agreement for such material. Upon timely correction of a designation, the receiving
 10 party must make reasonable efforts to ensure that the material is treated in accordance with the
 11 provisions of this agreement.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 14 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
 15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or
 16 a significant disruption or delay of the litigation, a party does not waive its right to challenge a
 17 confidentiality designation by electing not to mount a challenge promptly after the original designation
 18 is disclosed.

19 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding
 20 confidential designations without court involvement. Any motion regarding confidential designations
 21 or for a protective order must include a certification, in the motion or in a declaration or affidavit, that
 22 the movant has engaged in a good faith meet and confer conference with other affected parties in an
 23

1 effort to resolve the dispute without court action. The certification must list the date, manner, and
 2 participants to the conference. A good faith effort to confer requires a face-to-face meeting or a
 3 telephone conference.

4 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention,
 5 the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and
 6 in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion
 7 shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g.,
 8 to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging
 9 party to sanctions. All parties shall continue to maintain the material in question as confidential until
 10 the court rules on the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 13 LITIGATION

15 If a party is served with a subpoena or a court order issued in other litigation that compels
 16 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

17 (a) promptly notify the designating party in writing and include a copy of the
 18 subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to issue
 20 in the other litigation that some or all of the material covered by the subpoena or order is subject to this
 21 agreement. Such notification shall include a copy of this agreement; and

23 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 24 designating party whose confidential material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 3 material to any person or in any circumstance not authorized under this agreement, the receiving party
 4 must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its
 5 best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons
 6 to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such
 7 person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto
 8 as Exhibit A.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 10 MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently produced
 12 material is subject to a claim of privilege or other protection, the obligations of the receiving parties are
 13 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
 14 whatever procedure may be established in an e-discovery order or agreement that provides for production
 15 without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid.
 16 502(d) as set forth herein.

17 10. NON TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each receiving party
 19 must return all confidential material to the producing party, including all copies, extracts and summaries
 20 thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

21 Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents
 22 filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial
 23

1 exhibits, expert reports, attorney work product, and consultant and expert work product, even if such
2 materials contain confidential material.

3 The confidentiality obligations imposed by this agreement shall remain in effect until a
4 designating party agrees otherwise in writing or a court orders otherwise.
5

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 DATED this 17th day of February, 2023

/s/ Andrea L. Bradford

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14
15 DATED this 17th day of February, 2023

/s/ Jeremy Culumber

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7 *I certify that this memorandum contains 2,069 words, in compliance with the Local Civil Rules.*

8
9
10 PURSUANT TO STIPULATION, IT IS SO ORDERED

11
12 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
13 documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in
14 this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding,
15 constitute a waiver by the producing party of any privilege applicable to those documents, including the
16 attorney-client privilege, attorney work-product protection, or any other privilege or protection
17 recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed.
18 R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is
19 intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information
20 (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected
21 information before production. Information produced in discovery that is protected as privileged or work
22 product shall be immediately returned to the producing party.

23
24 DATED this 17th day of February, 2023.

25
26
27 
28 RICARDO S. MARTINEZ
29 UNITED STATES DISTRICT JUDGE

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CASE NUMBER 22-2-CV-00509 - 10

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury
have read in its entirety and understand the Stipulated Protective Order that was issued by the
United States District Court for the Western District of Washington on [date] in the case of NORTH
BEND ASSOCIATES, LLC, a Washington Corporation, Plaintiff v. CITY OF NORTH BEND,
Defendant and RIVER RUN VENTURES, LLC, a Delaware limited liability company, Interested Party
Case No.: 22-cv-00509. I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in contempt. I solemnly promise that I will not disclose in any manner any information or
material that is subject to this Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature:

**STIPULATED PROTECTIVE ORDER
CASE NUMBER 22-2-CV-00509-11**

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